RCMP PUBLIC COMPLAINTS COMMISSION

RCMP Act - Part VII
Subsection 45.45(14)

CHAIRMAN'S FINAL REPORT

FOLLOWING A PUBLIC HEARING

Complainant: Mr. Harry Seeton

April 1996

File: 2000-PCC-920957B

CHAIRMAN'S FINAL REPORT AFTER A PUBLIC HEARING

I. INTRODUCTION

The Process

Under subsection 45.43(1) of the RCMP Act, the Commission Chairman, where he considers it advisable in the public interest, may institute a public hearing to inquire into a complaint whether or not it has been investigated or reported upon or dealt with by the RCMP. The Commission Chairman will then assign members of the Commission to conduct that hearing and those members will be considered the Commission for the purposes of the hearing. Section 45.45 of the Act sets out some of the rules governing the hearings such as that any person giving evidence at a hearing may be represented by counsel. When the hearing is completed, the Commission, that is, the members comprising the panel that conducted the hearing, will prepare an interim report setting out their findings and recommendations about the complaint and that report is sent to the Solicitor General of Canada, the RCMP Commissioner and to all parties and their counsel appearing at the hearing.

Upon receipt of the interim report, the RCMP Commissioner is required to review the complaint in light of the report's findings and recommendations. The Commissioner must then notify the Chairman of the Commission of any further action that has been or will be taken with respect to the complaint or his reasons for not acting on any of the findings or recommendations.

After considering the Commissioner's notice, the Chairman of the Commission will prepare a final report setting out such findings and recommendations with respect to the complaint as he sees fit. That report is sent to the Solicitor General of Canada, the RCMP Commissioner and to all parties and their counsel appearing at the hearing.

II. INTERIM REPORT

Interim Report and Commissioner's Notice

In the present case, the Interim Report dated October 31, 1995, setting out findings and recommendations, was sent to the Solicitor General and the Commissioner. The Commissioner gave notice of the action he would be taking in a letter to the Chairman dated March 27, 1996.

The present report is the Chairman's final report with respect to this complaint. It contains, as a background to any final findings and recommendations, the contents of the Interim Report, which includes a summary of the complaint, the RCMP's investigation of the complaint, the general observations, and the interim findings and recommendations. This Final Report also includes the Commissioner's letter of March 27, 1996.

III. RCMP COMMISSIONER'S NOTICE

As stated under subsection 45.46(2) of the Act, the Commissioner forwarded the following notice to the Commission Chairman, the content thereof reads as follows:

> I acknowledge receipt of the interim report of October 31, 1995, file reference 2000-PCC-920957B, and materials about the complaint of Mr. Harry Seeton.
>
> I have examined the conclusions and the following notice is provided pursuant to the Royal Canadian Mounted Police Act.
>
> I share your findings as to the members' conduct on all the allegations. However I will take under advisement the general recommendations made by the panel. I will see if there is a further need to educate and inform the public, as recommended, in view of the release of the report to the public.
>
> I also want to extend my appreciation to the Panel members for their dedication and thoroughness in this matter.
>
> I look forward to receiving your final report.

IV. CHAIRMAN'S FINAL CONCLUSIONS AND RECOMMENDATIONS

The Commission Hearing Panel that completed the hearing into this complaint presented a comprehensive Interim Report in this matter. The Panel made findings and recommendations with respect to two complaints. I wish therefore, after having considered the Commissioner's Notice reproduced in Part III herein, to state my final conclusion with respect to these complaints.

Since the Commissioner concurs with the findings of the Hearing Panel, I am satisfied with the Commissioner's notice and need not add anything further.

Chairman

April 16, 1996

Jean-Pierre Beaulne, Q.C.
Chairman
RCMP Public Complaints Commission
P.O. Box 3423, Station "D"
Ottawa, Ontario
K1P 6L4

APPENDIX I

102-06010/

Royal Canadian Mounted Police | Gendarmerie royale du Canada

J.P.R. Murray
Commissioner | Le Commissaire

March 27, 1996

Jean-Pierre Beaulne, Q.C.
Chairman
RCMP Public Complaints Commission
P.O. Box 3423
Station "D"
Ottawa, Ontario
K1P 6L4

Dear Mr. Beaulne:

I acknowledge receipt of the interim report of October 31, 1995, file reference 2000-PCC-920957B, and materials about the complaint of Mr. Harry Seeton.

I have examined the conclusions and the following notice is provided pursuant to the Royal Canadian Mounted Police Act.

I share your findings as to the members' conduct on all the allegations. However I will take under advisement the general recommendations made by the panel. I will see if there is a further need to educate and inform the public, as recommended, in view of the release of the report to the public.

I also want to extend my appreciation to the Panel members for their dedication and thoroughness in this matter.

I look forward to receiving your final report.

Sincerely,

J.P.R. Murray

1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2

1200, promenade Vanier
Ottawa (Ontario)
K1A 0R2

APPENDIX II

2000-PCC-920957B

RCMP PUBLIC COMPLAINTS COMMISSION

RCMP Act - Part VII
Subsection 45.45(14)

COMMISSION INTERIM REPORT

Following a Public Hearing

Into the Complaint

of

Mr. Harry Seeton

PANEL

John U. Bayly, Q.C.	Chairman
J.R. Cunningham, Q.C.	Member
John L. Wright	Member

Hearing: Yellowknife, Northwest Territories

January 30-31, 1995
February 13-March 1, 1995

2000-PCC-920957

ROYAL CANADIAN MOUNTED POLICE
PUBLIC COMPLAINTS COMMISSION

ROYAL CANADIAN MOUNTED POLICE ACT, 1986

IN THE MATTER of a complaint made by Mr. Harry Seeton about the conduct of Inspector Dennis Massey, Constable D.N. Joyes and Constable Amrik Singh Virk who demonstrated excessive force when they pointed a firearm at picketing strikers on Giant Mine property at or about midnight June 2, 1992; and about the conduct of Inspector Dennis Massey who demonstrated excessive force when he discharged his firearm at picketing strikers on Giant Mine property on June 14, 1992.

Heard at Yellowknife, N.W.T., commencing on Monday, the 13th day of February, 1995.

Members:

JOHN U. BAYLY, Q.C. - Chairman
JOHN R. CUNNINGHAM, Q.C.
JOHN L. WRIGHT

INTRODUCTION

JURISDICTION

On November 9, 1992, writing on Canadian Association of Smelter & Allied Workers (CASAW) letterhead, Harry Seeton, President of CASAW Local #4 wrote to the RCMP Public Complaints Commission complaining about the conduct of the RCMP tactical squad "against our union members". He mentioned specifically the conduct of Inspector Dennis Massey of whom he complained as having been "responsible for pointing a loaded gun and discharging it several times in the vicinity of striking workers and various other transgressions...."

On November 25, 1992, the Chairman of the RCMP Public Complaints Commission wrote to Mr. Seeton acknowledging his complaint. In that letter of acknowledgment, Chairman Beaulne informed Mr. Seeton that he considered it advisable in the public interest to launch an investigation into Mr. Seeton's complaints.

On April 20, 1994, the Chairman of the RCMP Public Complaints Commission gave notice of his decision made pursuant to subsection 45.43(1) of the *RCMP Act* to institute a public hearing into the Seeton complaints. Pursuant to subsection

45.44(1), he named the Northwest Territories member of the Commission, John U. Bayly, Q.C., to hear the complaint. The allegations naming three officers were framed as follows:

> "In the matter of a complaint made by Mr. Harry Seeton about the conduct of Inspector Dennis Massey, Constable D.N. Joyes and Constable Amrik Singh Virk who demonstrated excessive force when they pointed a firearm at picketing strikers on Giant Mine property at or about midnight, June 2nd, 1992, and about the conduct of Inspector Dennis Massey when he discharged his firearm at picketing strikers on Giant Mine property on June 14th, 1992."

On June 6, 1994, Chairman Beaulne of the Commission issued a fresh Notice of Decision to Conduct a Hearing. This notice described the complaint in identical terms. The notice, however, revised the assignment of hearing members. The re-assignment was made pursuant to subsection 45.44(1) of the *RCMP Act*. By the terms of that reassignment, Chairman Beaulne assigned John U. Bayly, Q.C., Chairperson, John R. Cunningham, Q.C. and John L. Wright, members to conduct a hearing into the Seeton complaints.

On October 27, 1994, a Notice of the Hearing scheduled for February 13, 1995 was issued and was subsequently served on the three named RCMP members. On December 22, 1994, an amended Notice of Hearing, fixing January 30, 1995 as the date of the commencement of the hearing was issued. That amended notice

was subsequently served on the three named officers, Chief Superintendent Brian Watt as representing the appropriate RCMP officer and on the complainant.

PRELIMINARY MATTERS

The hearings convened at Yellowknife in the Northwest Territories January 30 and 31, 1995. Those days had been designated and were used to deal with preliminary issues. No evidence was called. On those hearing days, argument was presented with respect to fourteen preliminary issues which, despite their best efforts, counsel for the parties and our Commission counsel had not previously been able to resolve. During the course of argument, several of the matters were resolved and one application was withdrawn. Eleven preliminary rulings were made prior to evidence being called.

During the two days set aside for preliminary application, and with the full cooperation and able assistance of all counsel, we were able to hear and rule on all of the contested preliminary matters placed before us. Our rulings on those are attached to and form Appendix "A" to this report.

THE EVIDENCE AND FINAL SUBMISSIONS

The hearings re-commenced on February 13, 1995, and continued through March 1, 1995.

During that time, we heard the evidence of twenty witnesses, three of whom were called twice to enable us to consider the evidence with respect to each complaint separately. In addition to the *viva voce* evidence of those witnesses, each of whom gave evidence under oath or upon solemn affirmation, we received in evidence a book of exhibits which included still photographs of the Giant Mine property and videotape of parts of the June 14th, 1992 incident. In addition, six further exhibits were received by us, including a map and a mine site plan with the aid of which we were better able to orient ourselves to the scene of the incidents. A copy of that mine site plan is Appendix "B" to this report.

In order to hear all of the evidence and the final arguments within the three weeks we had set aside for these hearings, we sat for five full days and half of each Saturday every week during the hearing period. We could not have done so without the full cooperation of the parties and their representatives, the witnesses, our hearing registrar and, of course, our court reporters. We extend our gratitude to all of them.

Prior to the conclusion of the hearings, and with the consent of all parties, the three Commission members attended at the Giant Yellowknife Mine property. With minimal direction, we walked unaccompanied through the mine property from the main gate (Gate 3) to the load/cut building area (Gate 5), following the route taken by Officers Massey, Virk and Joyes on the night of June 1st - 2, 1992.

We have carefully considered all of the evidence we heard. It was valuable and important for us to have heard all of the witnesses in person. In addition, we have reviewed the exhibits which were received by us in evidence. That evidence, together with the ably presented final submissions of counsel for the parties were of great use to us in arriving as we have at our findings of fact and in making as we do, our recommendations to the Solicitor General of Canada and the RCMP Commissioner.

COMPLAINT #1

1. On May 23, 1992, the members of the CASAW union employed at (Royal Oak) Giant Yellowknife Mines went out on strike. Management decided to continue to operate the mine, mill and refinery using replacement workers and union members willing to cross the picket lines. Labour-management relations between the company and the strikers rapidly deteriorated and confrontation on the picket lines became frequent and unpleasant.

To protect its property, Royal Oak hired a security firm which abandoned the contract after a few days. That company was replaced by the Pinkerton Security and Investigations Company whose personnel began to arrive on site to assess the situation and security requirements on May 27, 1992. The previously contracted company apparently abandoned its security duties as soon as the first of the Pinkerton employees began to arrive. Personnel from Pinkertons arriving to assess the company's security requirements were pressed into immediate service. No briefings took place between personnel of the outgoing and incoming security companies. Apparently nobody from the first contracting agency remained long enough to brief Pinkerton personnel.

For the next four days, Pinkerton staff, including reinforcements, patrolled inside mine property. On the perimeter, members of the RCMP carried out patrols and attempted to keep the peace. It became clear on hearing the evidence of striking workers, Pinkerton guards and police officers that the situation rapidly became unbearably tense and volatile.

Late in May 1992, confrontations and threats of violence became more frequent. Along the picket line there was violence by representatives of both labour and management. Security personnel on the mine site were stoned and shot at by strikers using sling shots and ball bearings. Insults and threats were shouted back and forth. Electric power supplies were disrupted by striking workers. A decision was made to call in the RCMP Emergency Response Team (ERT) from Red Deer, Alberta. This special force was dispatched to reinforce the local detachment of the RCMP which had been trying to do both its regular police work and to patrol the mine area which is several miles from the built-up area of the City of Yellowknife.

Inspector Dennis Massey was the Operations Commander of the RCMP ERT deployed to assist the Yellowknife detachment of the RCMP to deal with a labour dispute at Giant Mines. He and his Red Deer, Alberta troop had arrived in Yellowknife some days prior to June 1, 1992. Members of the 50 man troop were stationed at the RCMP/DND hangar at the Yellowknife airport several miles and a few minutes drive from the Giant Yellowknife Mine.

On June 1, 1992, Inspector Massey and fellow ERT member, Constable Amrik Singh Virk, were on duty in a marked police patrol car in the vicinity of the Giant Mine. They were "showing the flag" by patrolling the main road.

2. During the first few days after the ERT had been deployed and prior to June 1st, Inspector Massey had spent long hours on patrol. He frequently stopped and talked with striking mine workers on the picket lines. He showed and discussed with them some of the special equipment the ERT members were issued and trained to use. By June 1, 1992, he knew many of the striking miners. He was known to some of them on a first name basis. Inspector Massey described to us in his evidence the concept of community policing. He testified that he had tried to use community policing techniques in an effort to get to know and to be known by the striking workers.

Inspector Massey had been on the Giant Mine property prior to June 1, 1992. However, neither the layout of the property nor names of the various buildings were familiar to him by that date.

Prior to June 1, 1992, Constable Virk had never been onto Giant Mine property, nor had he seen a diagram or aerial photograph of the mine/mill area. On one occasion, he had taken up an observation post on the bluff to the west of the mine property. His duty on that occasion was to assess the suitability of a certain

vantage point from the point of view of a sharpshooter. On June 1, 1992, Inspector Massey had invited Constable Virk to join him on patrol of the public highway which divides the mine property. He did so in part to make him more familiar with the area the ERT would be policing. While they were conducting their June 1, 1992 patrol, both Inspector Massey and Constable Virk were dressed in ERT fatigues. These fatigues are dark blue in colour and marked on the shoulders with standard RCMP shoulder flashes. When he gave his evidence, Inspector Massey initially appeared in that uniform so we could examine it first hand. As headgear, Inspector Massey usually wore an RCMP issue baseball style cap for which he had become recognizable to strikers in the few days he had been on duty in the area. However, he was not wearing a hat on June 1. That night, Constable Virk's head was also uncovered.

Shortly after midnight, a call was made over the RCMP radio system on a voice privacy frequency. The message was that there were four individuals armed with axes in the Giant Mine mill area. No police patrol unit was specifically designated to respond. After an interval of approximately half a minute, Inspector Massey answered the call. He confirmed that he and Constable Virk would respond to the complaint.

At the time he responded, Inspector Massey and Constable Virk were driving south on the Ingraham trail, the public highway which divides Giant Mine property. They

had just driven past mine Gate 5 and were approaching Gate 3, the main entrance to the mine and mill site.

At Gate 3 they were joined by Constable David Joyes, another member of the ERT. Constable Joyes had been in a communications monitoring vehicle not far from the Giant Mine area. He had overheard the radio transmission which had preceded Inspector Massey's arrival at Gate 3. Constable Joyes was dressed in the same ERT uniform as Inspector Massey and Constable Virk. His head was also uncovered.

There was an RCMP police cruiser from the local Yellowknife detachment parked at the main Gate. However, no RCMP officers were observed in the vicinity of this car. Approximately ten strikers were on picket duty outside Gate 3. Before entering mine property, Inspector Massey had a conversation with picket captain Fred Couch. Inspector Massey advised Mr. Couch that there was a reported incident on mine property and that he and Constables Virk and Joyes were responding to it. Inspector Massey assumed Mr. Couch had a radio and that he would advise other strikers of police presence on the mine property. However, no direct evidence was called to confirm whether or not Mr. Couch had in fact done so.

A number of Pinkerton guards were on duty in the mine site on the evening of June 1st and during the early morning hours of June 2. However, none were at Gate 3 when Inspector Massey and Constables Virk and Joyes entered the property. Of the three RCMP officers who responded to the call, only Inspector Massey had been on the Giant mine site previously. None of them knew the layout of the mine mill site in any detail or in which area of the property the alleged disturbance had occurred or was in progress.

The three members, therefore jogged along the main road through Giant property. It was an overcast wet early June morning. It was not dark but the weather conditions made it darker than it would otherwise have been. The three RCMP officers encountered a Pinkerton guard but did not speak with him. He pointed down the road through the mine site. In the words of Inspector Massey, "we didn't know where we were going. It was at the mill wherever that was." Inspector Massey was looking for a complainant so that the RCMP officers could assess the situation.

Inspector Massey's suspected that the intruders "reportedly on mine property were strikers." Because of that, and as a precaution, Inspector Massey had the ERT "stood up", ready for deployment. Instructions from his superiors had been not to deploy the ERT unless he knew what he was facing. Inspector Massey testified that he did not intend to deploy the ERT until he had assessed the situation. In any

event, he could not have deployed them until he could direct them to a specific location.

The three named officers met another Pinkerton guard a little more than halfway along the road from Gate 3 to Gate 5 but, when questioned, that guard had no additional information to offer. Further down the road, in the vicinity of the south end of the arsenic load cut shed, Inspector Massey saw some Pinkerton guards in a truck. The truck had its lights on and it was pointed in the direction the RCMP officers were jogging. However, the RCMP officers did not stop to talk. Somehow, Inspector Massey formed the impression that the people in the truck were directing him further down the road which the two constables were following.

Near the south end of the arsenic load cut building, a number of Pinkerton guards were standing on the road. Inspector Massey and his fellow officers did not stop to enquire of them as to the identity or whereabouts of a complainant, the whereabouts of the mill area they had been directed or the situation they were heading into. By the time he passed those Pinkerton guards, Inspector Massey realized that the RCMP officers were nearing the edge of the mine property. At that point, he called the Yellowknife RCMP headquarters on the voice privacy radio channel. Without further assessing the situation, he "requested that the ERT start rolling to the Gate with the large stack."

Had he been able to assess the situation as we did in hindsight, hearing the evidence of the complainant and others, Inspector Massey would have learned that what was actually happening at the mill area was quite different from what had been reported to the RCMP. In actual fact, there was one, not four individuals with axes. Furthermore, there was no evidence that anyone had been destroying mine property in the mill area.

What had happened was this. Gate 5 is a normally quiet picket area. At that Gate, access to the mine was blocked by a four foot high muck pile which prevented through traffic between the gap in the mine fence. A photograph of Gate 5 area was presented in evidence. A copy of that photograph is Appendix "C" to this report. Two strikers would have been enough to maintain union presence at that entrance to Giant Mine property. Ordinarily during the strike, there had been only two strikers assigned to that Gate. Occasionally another striker or two would stop by to chat. In fact, a couple of strikers had maintained that vigil at Gate 5 without assistance during much of the evening of June 1.

Throughout that evening, it had been wet, cool and cloudy. The strikers had a fire going and a tent for shelter. From time to time they were visited by strikers from other Gates. Occasionally, a police car would pass by. Prior to responding to the complaint, Inspector Massey and Constable Virk had in fact passed Gate 5 more than once during the course of the evening.

It appears from Inspector Massey's evidence, that he and Constable Virk had actually driven by Gate 5 a minute or so before responding to the complaint call on the police radio. Neither gave evidence of having noticed anything remarkable going on the Gate 5 area at the time or on any of their earlier patrols past that gate.

Shortly before midnight, strikers changed shifts. At Gate 5, their numbers swelled. Whether planned or spontaneously, strikers admitted they began to call insults and to taunt the Pinkerton guards who had positioned themselves inside the mine fence in the area of the mill buildings, some 40 to 50 yards from the picketing area.

At some point, a number of Pinkerton guards gathered along the edge of the Cottrell building. They kept to the shadows. They did so, no doubt, to avoid becoming too obvious targets for rocks and ball bearings which the strikers were in the habit of throwing and firing at guards and mine buildings.

The Pinkerton guards were not uniformly dressed. Some had Pinkerton jackets with crests. Others didn't. Some had helmets. A few had shields. Members of Pinkerton "Sierra Unit", some of whom were dispatched to the Gate 5 area before the RCMP arrived, were better and more uniformly equipped and dressed. However, according to the evidence, a number of Pinkerton guards at the Gate 5 area were dressed in dark trousers and jackets or dark coveralls. So attired, we

find they were difficult to distinguish from the ERT members in the poor lighting that prevailed on June 1st and June 2, 1992.

Until midnight on June 1, nothing had happened at the Gate 5 area which had not happened a number of times before on the picket line. Then, Union member James Mager, evidently under the influence of alcohol, crossed the picket line with an axe in his hands. While on mine property, Mr. Mager approached or was surprised by the Pinkerton guards. Whatever his intentions, his entry on to mine property was illegal. His doing so armed with an axe was provocative and dangerous. It set a number of events in motion. Firstly, it provided the basis for the erroneous report which was later circulated and passed on to the RCMP about a number of men destroying mine property. Secondly, it contributed to the tension and fear on both sides of the picket line. Thirdly, it was the chief reason numbers of people, hostile to one another, were brought into close contact and confrontation on June 2nd, 1992.

Mr. Chris Morton was the Pinkerton Guard officer second in command. He was on duty on June 1st and 2. Mr. Morton testified that when he first saw Mr. Mager, he had the axe in his left hand. Then Mr. Mager threw two rocks before he turned and went back in the direction of the muck pile and disappeared from sight.

Mr. Morton called the Pinkerton communications office. He advised of a "situation" and requested guards with dogs and half of the "Sierra team" to the Gate 5 area. He himself went to the area adjacent to the base of the stack. He ordered his dog handlers to "sweep the area around the buildings". He was concerned about the possibility of vandalism in the arsenic storage area. With four other Pinkerton guards, he advanced to the roadway which leads to the bag house near the edge of a catchment pond at the end of an outflow pipe.

At this time, there were about 15 strikers on the muck pile at the picket line. Despite the search by dogs and dog handlers, Mr. Mager was not located. Mr. Morton was about to call his guards back away from the Gate 5 area until he realized that one of his guards was missing.

As Mr. Morton and his men turned to look for the missing guard, Mr. Mager, still carrying the axe, reappeared. This time the axe was cradled in his arms. He was yelling insults and obscenities at the guards. His sentences seemed to Mr. Morton incoherent. Mr. Morton concluded from Mr. Mager's speech and his movements that he was intoxicated. We find on the evidence that Mr. Mager was acting under the influence of liquor. That fact only made the situation more unpredictable and potentially dangerous.

Mr. Morton formed the opinion that despite his intoxication and his comments, Mr. Mager was not threatening anyone with the axe. He therefore told his men to stay back while he himself approached Mr. Mager in an attempt to deal with the situation in a less confrontational way. He moved forward. Mr. Mager appeared to relax. They began to speak to one another.

Although Mr. Morton had told his men to take a step back for each step he took forward towards Mr. Mager, the guards had not followed his orders. Instead, they advanced behind Mr. Morton. According to their evidence, this advance by Pinkerton guards worried some of the strikers. Several of them moved onto mine property, advancing several yards beyond the muck pile. They threw rocks and called out rudely to the guards. They also called out to Mr. Mager urging him to return to the picket line. We find, that as a group, the striking workers were at that point in time genuinely concerned for Mr. Mager's safety and were worried about the rash action he had taken.

Meanwhile, Mr. Morton turned around to discover that his men had disobeyed his order and he again ordered them back. They retreated. The strikers simultaneously halted their advance onto mine property at a line of muck and tires some few yards inside the mine property line. That line of muck and tires can be seen in the photograph, Appendix "C.

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While he was trying to reason with Mr. Mager, Mr. Morton noted two or three unidentified people wearing dark clothing running towards the strikers from the side of the load cut building. At the time he noticed them, Mr. Morton was listening to Mr. Mager. The strikers and the guards were yelling at one another. If the men who were running towards the strikers were saying anything, Mr. Morton did not hear what it was they were saying. He did hear the detonations and he saw muzzle flashes caused by the warning shots fired by Constable Virk. When Mr. Mager heard the shots, he froze and remained still. Mr. Morton told him to drop the axe which he did.

Inspector Massey testified that he expected to meet a complainant around the corner of the load cut building. And so, jogging diagonally abreast, with Constables Virk and Joyes he continued down the road which ran along the side of the load cut building. All three officers were aware of the noise of equipment of machinery but apparently none of them heard the voices of the strikers and Pinkerton guards. All three were unaware of the shouting and rock throwing in progress in front of the load cut building. When they came around the corner out from behind the cover or shadow cast by the load cut building, the three officers encountered people running. The RCMP officers were immediately met by a barrage of rocks. All three officers were hit by rocks or ball bearings as they ran towards the crowd. These objects were being thrown or fired in their direction by some of the striking workers.

Faced with this situation and with assaults directed at them, all three RCMP officers drew their weapons. Warning shots were fired by both Officers Virk and Joyes. No shots were fired by Inspector Massey.

We were interested to learn that none of the three officers had ever fired warning shots before. We were told by them and by RCMP training officer, Staff Sergeant Stewart, that current RCMP training does not include the firing of warning shots as one of the recommended options available to RCMP officers acting to preserve and protect their own lives and the lives of others.

There were shouts of command from the three officers. In addition, at least two of the police officers shouted out the word "police". They testified that they were trying to identify themselves as police officers and hoping thereby to gain control of the situation. We accept their evidence on that point and we find that to be the case. Some of the strikers who testified heard some of what the police officers were shouting. Others did not. All heard the gunshots. In fact, when they heard shots fired, most of the strikers retreated. Two strikers who were slower than the others, were caught by Inspector Massey and Constable Joyes, taken to the ground and arrested.

Constable Virk encountered striker Blaine Lisoway, who was armed with a pickax handle. Constable Virk ordered Mr. Lisoway to drop the stick. In the process, he

pointed his firearm at Mr. Lisoway's face. Subsequently, when Constable Virk's attention was momentarily taken up by another potential threat,, Mr. Lisoway struck him a disabling blow with a pick handle which briefly incapacitated him. Despite the force of the blow which on all of the evidence we find to have been considerable, Constable Virk regained his balance and again pointed his firearm at Mr. Lisoway. He testified that he was preparing to shoot Mr. Lisoway and would have done so, except that the striker dropped the pick handle. In fact, Constable Virk was in the act of applying the necessary trigger pressure when Mr. Lisoway finally did drop the pick handle and subsequently retreated to the muck pile. After his confrontation with Mr. Lisoway, Constable Virk continued to point his firearm at the group of picketers in the vicinity of the property line until the arrival of additional ERT members who had appeared in response to Inspector Massey's earlier radio call.

In pointing his firearm at the milling strikers as he did by sweeping the crowd with his handgun, Constable Virk provided necessary cover for Constable Joyes who was at the time on the ground kneeling over a suspect. By doing so, Constable Virk also kept the muttering and threatening crowd of strikers at bay until reinforcements arrived to help the three RCMP officers take complete charge of the situation.

The focus of our inquiry is not to assess the individual or collective judgments of Inspector Massey, Constable Joyes and Constable Virk for having entered the situation as they did. We could speculate that a more cautious approach might have allowed them to assess and take charge of the situation without the need of their weapons. However, we must and do keep in mind that the three named officers had been given inaccurate information as to the nature of the breach of the peace. Furthermore, while enroute to Gate 5, they had received from the Pinkerton guards only encouragement to proceed and no information. Nobody had stepped forward to brief them. In fact, the line of guards at the end of the load cut building had separated to let them pass through without waving them down to alert them to facts as they knew them. Perhaps the guards incorrectly assumed that the police officers had already been briefed. We have no evidence of that or to the contrary.

Be that as it may, the report of "four men damaging mine property with axes in the mill area" was a very general complaint. We were interested to observe on all of the evidence, including that of the experienced police officers themselves, how little effort they made to obtain further information before they ran into the altercation between the strikers and the Pinkerton guards. No doubt, as they testified, information which brings police officers into such situations is often contradictory, inaccurate and sometimes exaggerated.

We were also interested to discover how little any of the named officers knew of the Giant Mine and mill site. The ERT team had been brought into Yellowknife specifically to carry out their special duties because of the Giant Mine strike. We recognize that often police officers must respond to situations in areas unfamiliar to them. However, they could have been better informed of the Giant Mine layout. It would have given them an advantage to know on June 2, 1995, where they were on the mine property, particularly in relation to any picketing areas they might have been approaching.

Of the three officers, only Inspector Massey had been onto Giant mine property prior to June 2nd, 1992. Apparently, no layout or diagram of the mine/mill area was made available to the ERT members for reference in the event of just the sort of call out to which these officers responded. Had they been more familiar with the site, instead of proceeding in the direction of Gate 3 (away from the situation in progress), Inspector Massey and Constable Virk might well have driven directly to Gate 5 when the police radio call came in.

We believe it is important, though not our primary focus, to examine and report on the police uniform issued to members of the ERT in 1992. We find on all the facts that at least initially, as they came around the end of the load cut building in their dark blue fatigues, there was nothing to sufficiently identify officers Massey, Virk and Joyes as police officers and little to distinguish them from Pinkerton guards.

Using their voices, they did their best to identify themselves to the strikers as police officers. Much of that effort was either lost in the noise or misinterpreted as calls for police assistance. Only when shots were fired, did some strikers begin to realize that the ERT members were not Pinkerton guards. We find that some strikers did not realize that the police officers were not guards until after they had all retreated to the muck pile.

We were therefore pleased to be shown by Inspector Massey a jacket now issued to all ERT members upon which the word "POLICE" is emblazoned in large bright yellow letters. We were surprised to learn that initially, on their own and at personal expense, the ERT members had purchased this important addition to their issued uniforms. It was even more recently that the RCMP had recognized the value of such identification. The RCMP now issues these marked jackets as part of the ERT equipment and uniforms.

There is no doubt that, emotionally caught up in the events of their labour dispute as they were, virtually all of the strikers on the picket line on June 2nd, 1992 (like most Canadians) respected the authority of the police. Most of the strikers submitted to RCMP authority peacefully and obediently. By contrast, the strikers had, from the date of their arrival on Giant Mine property, treated the Pinkerton guards badly by menacing, insulting, and assaulting them with rocks. Some former strikers testified before us that they had no liking or respect for the Pinkerton

guards or the job they were doing. Clearly the strikers were prepared to treat the Pinkerton guards, not as peace officers, but as protagonists in the strike. Until the strikers at Gate 5 realized individually, and later as a group, that the three RCMP/ERT members were not Pinkerton guards but were in fact peace officers, they treated the officers with the same contempt and hostility as they had the private security forces hired by their employer. Once they recognized they were dealing with RCMP members, the strikers almost without exception behaved as most of us do when in the presence of public authority. They submitted and obeyed.

But until that recognition took place and until the named officers had established their identity and asserted their authority, there is no doubt that officers Massey, Virk and Joyes were in danger of suffering grievous bodily harm. At least in the case of Constable Virk, there was actual risk of death at the hands of angry members of the Union on picket duty at Gate 5 on June 2nd, 1992.

THE APPLICABLE LAW

Faced with that situation, what are members of the RCMP empowered, trained and expected to do?

Section 25 of the Criminal Code provides:

> "25(1) Every one who is required or authorized by law to do anything in the adminstration or enforcement of the law
>
> (a) as a private person,
> (b) as a peace officer or public officer,
> (c) in aid of a peace officer or public officer, or
> (d) by virtue of his office,
>
> is, if he acts on reasonable grounds, justified in doing what he is required or authorized to and in using as much force as is necessary for that purpose."

In addition, s. 27 of the Criminal Code provides:

> "27. Every one is justified in using as much force as is reasonably necessary
>
> (a) to prevent the commission of an offence
>
> (i) for which, if it were committed, the person who committed it might be arrested without warrant, and
>
> (ii) that would be likely to cause immediate and serious injury to the person or property of anyone; or
>
> (b) to prevent anything being done that, on reasonable grounds, he believes would, if it were done, be an offence mentioned in paragraph (a)."

It is clear to us that Parliament gave certain powers to peace officers to protect them and to allow them to protect themselves in the reasonable execution of their duties. To the great credit of all Canadian law enforcement agencies, including the RCMP, police have used and continue to use those powers sparingly. As a society

we have set high standards for peace officers and have come to accept that the pointing and discharge of firearms during the course of duty will be rarely necessary. However, we equip our police officers with handguns and other weapons, and give them the power to use force, including firearms, where that use is reasonably justifiable for their protection and for the protection of others.

As citizens of Canada, we should be aware that police officers have those powers and can be expected to use them where their personal safety and that of others is in jeopardy.

We who after the fact assess the conduct of peace officers using force, and in particular firearms, must be careful to assess their conduct on the basis of the information available to those officers at the time when that force was used. We should not assess their conduct on the basis of information not readily available to them at the time they made their decision to use that force.

We should be aware as responsible citizens, that when our actions threaten the lives or the physical well being of police officers or others for whom they are responsible, that our police officers are empowered, trained, and expected to respond with the use of appropriate force, including the use of firearms.

TRAINING

On the question of training, we had the evidence of the named officers themselves,. We also had the evidence of Staff Sgt. Hugh Stewart who has himself trained RCMP officers including Tactical Team members in the appropriate use of force in response to the threat and physical aggression of others. Staff Sgt. Stewart testified that RCMP officers are trained to enter what he called the continuum of force at a level appropriate to gain control of any potentially dangerous or life-threatening situation. In doing so, officers are trained that a person armed with a deadly weapon within 25 feet of a police officer poses a threat to the officer's life, to which the officer, if he reasonably believes he may be attacked, should respond. It has been demonstrated by experience, that if the individual posing the threat is within that particular radius, and the officer has not unholstered his firearm and prepared it for firing, he may well not survive an attack by the aggressor.

We were advised by Staff Sgt. Stewart that until 1992, the use of warning shots was recommended as part of the continuum of force. Warning shots are not now recommended for a variety of reasons. These reasons include the following:

1. The firing of warning shots requires the peace officer to aim his or her firearm elsewhere and away from the dangerous subject.

2. Warning shots have to be carefully placed so that they do not endanger others.

3. Warning shots are sometimes misunderstood and cause others to retaliate with heightened aggression;

4. Warning shots may cause a fleeing suspect either to flee more quickly or to turn and attack; and

5. Warning shots use up ammunition which may be otherwise and immediately required should situations escalate.

The use of warning shots, however, is discussed in training and may sometimes be used in appropriate situations.

STANDING ORDERS

In addition to the provisions of the law with which RCMP officers must comply, members of the force including ERT members, are subject to standing orders with respect to the handling and use of firearms. These standing orders in force in 1992 were provided to us. These orders provide in pertinent part:

"C.2. A regular member or special constable member shall only carry a firearm:

C.2. a. When his/her duties require a firearm be carried, and

C.4. A member shall use discretion and restraint in the use of firearms.

D.1. e. Use only the amount of force necessary to successfully carry out your duties.

f. Perform your duty in connection with the arrest or detention of any person, even in the face of threats or personal danger, using only such force as the law justifies.

D.2. a. Handling. A member will use caution in the handling of firearms to prevent their accidental discharge or theft."

RCMP OPERATIONS MANUAL

In addition to the applicable provisions of standing orders which pertain to the use of firearms, RCMP officers are directed by force policy as set out from time to time in the RCMP Operations Manual. We were provided the chapter of that manual which deals with the Discharge of Firearms as it was in 1992 and as it existed in 1995 at the time we conducted our hearing.

In 1992, the Operations Manual provided in pertinent part:

"2. a. Do not discharge a firearm at a person except to protect life or prevent grievous bodily harm.

e. You may also discharge your firearm to:

3. gain control of a situation you reasonably believe, if allowed to continue, could result in injury or death to a person; or"

A copy of OM-352/92 from which those references are taken is Appendix "D" to this report.

We find that the discharge of firearms by Constables Virk and Joyes and the subsequent pointing of a firearm by Constable Virk on June 2, 1992, was in accordance with both the Standing Orders directing RCMP officers and with OM Bulletin 352, particularly 352, paragraph 2.e.3.

FINDINGS AS TO CONDUCT OF NAMED OFFICERS AND THE APPROPRIATENESS OF THEIR USE OF FIREARMS ON JUNE 2, 1992

We find as facts that as they came around the corner of the load cut building on June 2nd, 1992, the three named officers were met with a barrage of rocks and ball bearings, some of which objects struck them. Any of those rocks or ball bearings could have caused serious bodily harm and even the death of one or more of the officers. If that wasn't apparent to the picketing workers, it ought reasonably to have been. We have no difficulty finding that Inspector Massey and Constables Virk and Joyes were each justified in meeting that force by drawing

their firearms and that Canadians should be neither shocked nor surprised that they did so.

While warning shots are no longer specially recommended as a matter of current RCMP policy, they are dealt with in training as an option in appropriate situations. Given the crowd and other noise, the inability to gain the attention of the striking miners and the need to assert control of the situation by making it clear that they were police officers, we find that the firing of warning shots by Constables Virk and Joyes in the circumstances was both safe and appropriate use of potentially deadly force. Indeed, most of the striking miners responded to the shots and to the attempts of the policy to identify themselves by retreating to the muck pile on the perimeter of Giant Mine property and by stopping the throwing of stones and ball bearings.

A few, including Blaine Lisoway, continued to pose a threat and a danger to the police officers and those arrested persons, Mr. Magrum and Mr. Mager, as well as to the Pinkerton guards in the vicinity. A number of striking miners made threatening remarks from the vicinity of the muck pile. Some kept hold of their sticks. Each of those sticks was capable of being used as a club.

In that situation, Constable Virk's panning of the crowd of striking miners with his firearm was completely justified. In panning the crowd of angry people as he did,

Constable Virk indicated that he was prepared, if necessary, to use deadly force to protect himself and others, particularly Constable Joyes and his prisoner, who were defenceless and vulnerable to attack on the ground near where Constable Virk was standing. Staff Sgt. Stewart gave evidence that in keeping his firearm in the ready position, Constable Virk was doing exactly what he was trained and under orders and operations policy as a RCMP officer to do. In fact, he did what Staff Sgt. Stewart testified was appropriate in the similar hypothetical situation which was put to him by Commission counsel during the course of his evidence. In his evidence, Staff Sgt. Stewart said that the members are taught to continue searching an area to ensure that there are no other hostile individuals there.

In the course of panning the hostile crowd of people, we find that Constable Virk pointed his firearm at Blaine Lisoway and that in the circumstances, he was justified in doing so. When he did so, we find that Blaine Lisoway, still carrying a pick handle, was within a few feet of Constable Virk. He was certainly well within the 25 feet danger radius about which Staff Sgt. Stewart testified.

When Constable Virk continued panning the crowd with his firearm in the ready position, and as soon as he stopped pointing it at Mr. Lisoway, Mr. Lisoway took advantage of the opportunity to strike Constable Virk causing him bodily harm. In doing so, he posed a real threat to the life and safety of Constable Virk, and to the lives and safety of others, including Constable Joyes who were under

Constable Virk's protection. In that situation, the Criminal Code and the RCMP policy and training mandated and directed Constable Virk to use deadly force if and so long as the threat continued. Indeed, Constable Virk was ready to and preparing to shoot and to kill Mr. Lisoway. He had begun to squeeze his hand to apply the trigger pressure necessary to discharge his firearm. It is a tribute to his self-control, training and regard for the sanctity of human life that he refrained from firing long enough to allow Mr. Lisoway the chance to back away. Mr. Lisoway wisely and fortunately did. It would have been a great tragedy had his life been taken. However, it is our view that it would in all of the circumstances have been justified.

THE COMPLAINT AS IT RELATES TO THE JUNE 2nd, 1992 INCIDENT

The complaint is worded such that we anticipated evidence that Constable Joyes or Inspector Massey pointed firearms at striking miners on June 2nd, 1992. There was no such evidence. Only Constable Virk pointed a firearm at striking miners on June 2nd, 1992, and we find on all of the facts that he was justified in so doing.

RCMP REQUEST WITH RESPECT TO COMMENDATION OF NAMED OFFICERS

We were asked to commend the named members for their conduct on June 2nd, 1992. We are a public body charged with the responsibility of reviewing complaints, finding facts, reporting to the Solicitor General, the RCMP Commissioner and to the public and, where appropriate, making recommendations. To the extent that in our findings we comment favourably about the conduct of RCMP members, those comments speak for themselves. Commendation is another matter. As a consequence of its history and structures, our national police force is a para-military organization. It has its own processes for commendation and for discipline. It would be inappropriate for us to try to play a part in either of those processes each of which is outside our mandate.

COMPLAINT #2

On Sunday, June 14th, 1992, during the course of the CASAW strike at the Giant Yellowknife Mine, a meeting of strikers and supporters was scheduled to take place at approximately 6 p.m. at the main gate into the mine site. Word was passed around the Union membership during the several days leading up to June 14th. It was spread by way of reminder to the Union members and their supporters present at a pig roast barbecue not far from Yellowknife on June 13th.

By June 13th, the Pinkerton security guards had received some information that such a meeting was going to take place. They had heard rumours that strikers were going to use the occasion to try to enter mine property. This information was passed on to Sergeant Ernie Defer of the Yellowknife RCMP detachment. However, that information does not seem to have been shared with members of the ERT and the riot troop commanded by Inspector Dennis Massey of the Red Deer, Alberta detachment of the RCMP. Inspector Massey had, however, heard from picketing mine workers that there was to be a meeting at the main gate around the supper hour, June 14th. Inspector Massey had been briefed by Sergeant Bill Code of the Yellowknife detachment that "something big" was going to happen around the dinner hour.

By 6:00 p.m. June 14th, 1992, strikers and supporters had begun to gather in numbers outside Gate 3, the main entrance to the mine property. Although the day was a warm and sunny one, a number of strikers and supporters were wearing toques and jackets. Several wore gloves.

Inspector Massey, having observed the gathering crowd, went to the Department of National Defence hangar at the Yellowknife airport where the ERT and riot troop members were stationed. He briefed them on their deployment. He "stood them up" so they would be ready to be deployed.

Inspector Massey's instructions were that the riot troop members were to be deployed to the Yellowknife garbage dump access road off the Ingraham Trail, approximately 1 1/2 miles (2.4 kms) south of Gate 3. The troop members were to wait there in a bus until they had received further instructions. The ERT was to station itself north of the mine property on or near the Ingraham Trail somewhere in the vicinity of the Yellowknife River.

About 7:00 p.m., Inspector Massey arrived back at Gate 3. At the time, there were about one hundred and fifty strikers and supporters present. Some strikers and supporters had already moved across the parking lot and were approaching the security gate when Inspector Massey arrived. He testified to us that he sensed from the mood of the crowd that something was likely to happen.

Inspector Massey quickly decided to go onto the mine property. He had a knapsack in his police car. Into it he had put his gas mask, two stun grenades and three tear gas canisters. He took his knapsack and strapped it around his waist. He decided not to take any other equipment or weapons (except his sidearm) so as not to do anything which might contribute to the mounting tension at the main gate area.

Inspector Massey proceeded on foot from the main gate area where most of the strikers and supporters had remained. He crossed the parking lot and entered the property through the security gate. We not only heard evidence of this and the ensuing events, but we saw and received in evidence videotape film showing some of what transpired from the time Inspector Massey entered Giant Mine property to the time the riot troop arrived at the parking area adjacent to Gate 3. Of course, the camera is both selective and limited in its field of vision. However, that film as an addition to the evidence we received from the eye witnesses was valuable to us.

A number of strikers and supporters had left the main gate area and had walked or marched through the security gate. Many of them carried sticks. Some wore helmets. While some, as previously stated, wore toques and gloves and jackets, others wore shorts and short-sleeved shirts.

Some of the strikers and supporters called or shouted comments across the fence at the Pinkerton guards inside the main property fence. Stones were thrown by the strikers and supporters. Some stones may have been thrown by the Pinkerton guards. A number of those strikers and supporters who were closest to the security fence east of the security gate and adjacent to the mine office administration building took hold of the chain link fence at the top and began to pull at it. Witnesses testified that a similar attempt had been made during an evening altercation a few days earlier. At that time, the top of the fence had been loosened on the frame.

Prior to June 14th, 1992, Inspector Massey had received assurance from mine administration that the top of the fence had been properly re-secured to the frame. He was surprised that on June 14th, the fence only required a brief cooperative effort by strikers and supporters to be torn from its frame and laid flat on the ground.

Whether there was some act of sabotage which preceded the June 14th tearing down of the fence was not established in the evidence before us. There was, as we observed on the viodetaped evidence, a somewhat coordinated effort required and organized. During that effort, a voice called out "now" to signal those with a grip on the fence to haul it from the frame. We were not able to determine on the evidence before us whether that action was planned or spontaneous. We were

able to see the tearing down of the fence clearly recorded on the Pinkerton videotape of the incident. We viewed that portion of the tape several times during the course of the proceedings.

There had been a lull in the rock throwing prior to the taking down of the fence. However once it was down, approximately thirty strikers and supporters entered the property and rock throwing resumed. Rocks were thrown at both the Pinkerton guards and at the windows of the mine buildings. Some of the strikers and their supporters entered the cook trailer and committed vandalism inside the building. A semi-trailer refrigeration unit was also deliberately damaged. Hoses in the refrigeration system were disconnected and an attempt was made to further damage the refrigeration equipment by striking it with a stick.

Shortly after the strikers and supporters had crossed over the fence which had been torn down, Inspector Massey threw both his stun grenades and his tear gas canisters. At least one of the tear gas canisters was picked up by striker Lloyd Garth Beck who had put his gloves on before the fence was torn down. We are not able to determine from the evidence whether he wore the gloves so that he would be able to handle tear gas canisters in the event they were used by the police or whether he took advantage of wearing these gloves, for the purpose when the opportunity presented itself.

In any event, because of the wind direction, the tear gas was not particularly effective, either when originally thrown by Inspector Massey or when thrown back in the direction of Pinkerton guards by Mr. Beck. Nor were the stun grenades particularly effective, though both detonated. Perhaps that was because strikers and supporters were spread out over a fairly wide area. Some were in fact separated from Inspector Massey by buildings and semi-trailer units and were therefore out of his sight when the canisters were thrown.

In addition, because Inspector Massey had used his tear gas canisters, he had to put on his gas mask which restricted both his vision and his hearing.

Once the strikers and supporters were on the property, rocks were thrown by both sides. Some of those rocks were thrown at Inspector Massey, who was the only police officer on the scene, but he testified that none hit him. A number of physical fights broke out between the strikers and supporters and the Pinkerton guards. James Mager, one of the strikers, threw a rock at one of the Pinkerton guards whom he recognized. Striker James Fournier was involved in an altercation with another security guard, Eric Melanson, who had retreated into a pond. Mr. Fournier, stood on the berm above Mr. Melanson and threw rocks at him in the water below. Mr. Fournier said his intention was to splash Mr. Melanson. We find that explanation far-fetched and we reject it. We prefer and accept the testimony of Mr. Melanson who said that Mr. Fournier threw rocks at him, threatening to kill

him. We find that the rocks were thrown at Mr. Melanson with at least the intent to do him injury. One of the rocks, a large one, did in fact strike Mr. Melanson in the ribs and caused him bodily harm.

During the altercations between strikers and supporters and Pinkerton guards, Inspector Massey was standing on the edge of the berm adjacent to the pond. He witnesses several strikers and supporters, including Mr. Mager, strike another Pinkerton guard who was at the time lying on the ground. A number of the assailant strikers and supporters were carrying sticks.

Fearing for the safety of this particular Pinkerton guard, Inspector Massey drew his sidearm and fired two warning shots into the air away from the direction of the strikers and supporters. He yelled at them but the strikers and supporters did not react. His attention was diverted from this altercation as he dodged rocks being thrown in his direction. When he looked again, strikers and supporters were beating the same or perhaps another Pinkerton guard who was lying on the ground. Fearing for the life and safety of this person, Inspector Massey fired two further warning shorts. The strikers and supporters did not back off and Inspector Massey pointed his weapon at them. However, as he testified, he could not "get a shot." We understood this to mean that he could not safely take a shot at an assailant for fear of wounding or killing an innocent person. Consistent with his training, Inspector Massey did not risk a random shot into the crowd.

We could not determine what effect Inspector Massey's warning shots and yelling had on the strikers and supporters attacking the Pinkerton guard or guards. Nor could we determine on the evidence how those altercations had resolved themselves. We can say no serious injury resulted either to the guard or guards or to the strikers and supporters. It may be that in firing the warning shots and in shouting as he did to try to gain control of the situation, Inspector Massey helped bring those two particular assaults to an early and satisfactory conclusion. That we find was his intention.

After he had participated in the attack on one of the Pinkerton guards, striker James Mager clad in a bright green balaclava hat which covered his face, was caught by a number of Pinkerton guards. On witnessing his capture, a number of the other strikers and supporters advanced on the Pinkerton guards who had Mr. Mager in their custody. Some strikers and supporters were yelling for those guards to let him go. At least one of these strikers or supporters was carrying a stick in a threatening manner.

Seeing a serious confrontation looming, Inspector Massey pointed his sidearm at the advancing strikers and supporters and yelled at them. His voice was muffled by the gas mask which covered his mouth and it is doubtful whether his words could be heard. There was, however, no doubt as to the non-verbal message he

communicated by pointing his sidearm at the advancing strikers and supporters. They halted and approached no closer.

Several Pinkerton guards formed up behind Inspector Massey. At that point, the strikers who had been seeking the release of Mr. Mager, turned and retreated. They walked off the property with the strikers and supporters who had entered it minutes earlier.

By this time, the ERT had arrived from the Yellowknife River area. Members of the ERT moved across the parking lot and began to take control of the situation. Shortly thereafter, the riot troop in full equipment, including helmets and shields, marched onto the parking lot. By their presence they helped to force the already retreating strikers and supporters to leave the mine property without further incident.

The events of the entire incident which are described in this report, lasted only a very few minutes. Shortly after the strikers and supporters had breached the mine property fence, Inspector Massey had mobilized both the ERT and the riot troop by radio command. The rest of the events transpired in little more time than it took for the reinforcements to arrive.

During that time, Inspector Massey was the only peace officer on the mine property. We find he used all of the means at his disposal in his attempt to turn back the thirty or more strikers and supporters who had entered mine property and to cause them to retreat to where they had come onto mine property.

Inspector Massey entered the continuum of force, not by using his firearm, but by detonating stun grenades and launching tear gas canisters. Only when it was evident that one or more of the Pinkerton guards were in danger of suffering grievous bodily harm or death at the hands of strikers and supporters, did Inspector Massey unsheathe his sidearm and on two occasions, fire warning shots into the air.

Although he himself had been ducking rocks thrown in his direction prior to firing the warning shots, Inspector Massey did not take out his sidearm until other members of the public under his protection were in danger.

Shortly after that, and only when it appeared to him likely that serious bodily harm was being threatened or inflicted on a Pinkerton guard and subsequently that there would be a serious confrontation between strikers and supporters and Pinkerton guards over the capture and arrest of James Mager, did Inspector Massey point his firearm at the armed and threatening strikers. Perhaps if Inspector Massey had not

had his gas mask on, he could have talked the strikers and supporters out of their actions without having to point his firearm at them.

However, the fact is that he had his mask on. Furthermore, he needed to have it on because he had deployed tear gas and he could not risk becoming overcome by that tear gas.

We find without hesitation that the only reasonable means of deterring the strikers and supporters which remained at his disposal was the use and pointing of his sidearm. We find that he was more than justified in firing warning shots and in pointing his sidearm as he did at the advancing strikers and supporters.

THE APPLICABLE LAW, STANDING ORDERS AND RCMP POLICY

The provisions of sections 25 and 27 of the Criminal Code of Canada have already been set out and referred to in connection with the conduct of the named officers in the June 2nd, 1992 incident. There is no need to repeat the text of those sections here. Sections 25 and 27 of the Code provide justification to a peace officer for the use of deadly force in situations where he or she believes such force to be necessary to preserve himself and anyone under his protection from death or grievous bodily harm.

Section 27 of the Code also provides protection to a peace officer who uses reasonable force to prevent the commission of an offence that would likely cause immediate and serious injury to anyone.

In addition, the Criminal Code contains provision for the suppression of riots. It is not necessary for us to determine whether the strikers and supporters who assembled on June 14th, 1992 had a common purpose of the type referred to in section 63 of the Criminal Code, that is, to disturb the peace tumultuously or to cause others to do so. There was some evidence led before us suggestive of common purpose and intent, both as to the June 14th, 1992 gathering generally, and as to the tearing down of the fence on that day. That evidence is inconclusive as to common intention. Had a riot been expected, we would have thought that the required steps prescribed in the *Riot Act* (now section 63 through 69 of the Criminal Code), including the reading of the proclamation and order to disperse, would have been followed by the public authorities having advance information. Such action, had it been taken prior to the advance of several dozen strikers across the Giant Mine parking lot, might have been sufficient to deal with the situation at an earlier stage. That however is the stuff of speculation.

What is material here is that the powers extended to peace officers pursuant to the provisions of sections 25 and 27 of the Criminal Code of Canada do not require that there be a riot or apprehension of riot before such powers can be used.

In his actions on June 14, 1992, Inspector Massey also acted in a way consistent with RCMP Standing Orders and force policy as set out in OM 352. The pertinent sections have already been referred to.

TRAINING

With respect to the incidents which gave rise to the complaint against Inspector Massey for his conduct on June 14th, 1992, we again found the evidence of Staff Sergeant Hugh Stewart to be useful. When questioned in a hypothetical way with respect to the incident of June 14th, Staff Sergeant Stewart testified that the action taken by Inspector Massey and in particular, his use of his firearm, was entirely consistent with the training he had received as a peace officer and appropriate to this sort of situation. Staff Sergeant Stewart observed again that the use of warning shots is no longer part of the recommended procedure or an element of the continuum of force. However, the use of warning shorts is discussed in basic training with new recruits to the RCMP.

FINDINGS AS TO THE CONDUCT OF INSPECTOR DENNIS MASSEY AND THE APPROPRIATENESS OF HIS USE OF FIREARMS ON JUNE 14th, 1992

In our view, Inspector Massey's belief that he was in a situation which required him to threaten or to use deadly force was completely reasonable. We accept it on its face. His use of deadly force to save a Pinkerton guard being attacked and in danger of death or serious bodily harm, would have been completely justified. It is fortunate that his training and his many years of experience enabled him to handle the situation without having to resort to discharging his firearm at any of the strikers or their supporters.

Faced with the assault on the Pinkerton guard or guards being attacked, and later with the strikers and supporters advancing with sticks on the Pinkerton guards who had Mr. Mager in their custody, Inspector Massey faced situations in which serious injury was likely. We have no hesitation in accepting Inspector Massey's assessment of those situations which led to his discharging warning shots and his pointing of a firearm at strikers and supporters. Both uses of his firearm were reasonable and, in our view, restrained uses of deadly force. Inspector Massey's training and experience was evident in the care and restraint he used in entering and progressing through the continuum of force to the appropriate point to ensure his safety and to protect others. He used or threatened deadly force with the least risk to others, including those who were at the time engaged in criminal acts.

THE COMPLAINT AS IT RELATES TO THE JUNE 14, 1992 INCIDENT

The complaint itself, that Inspector Massey discharged his firearm at picketing strikers on June 14th, 1992 is not made out on the evidence. On the videotape we received as an exhibit, we saw that all of the shots fired by Inspector Massey were warning shots which were discharged into the air away from the area where the strikers and their supporters were gathered. There is no evidence that Inspector Massey discharged his firearm at picketing strikers. He did point his firearm at some of them. In doing so, we find he was completely justified.

RECOMMENDATIONS

We make no recommendations arising out of the conduct of Inspector Massey, Constable Virk or Constable Joyes on the two days in question. Their conduct was true to their training and consistent with the use of force authorized under the Criminal Code, Standing Orders and RCMP policy. Perhaps there were other ways they could have dealt with the situations in which they found themselves, but these speculations require the luxury of hindsight. We expect that consistent with their practice, the named officers and those with whom they work, especially other members of the tactical squad, have already examined the events of June 2nd and

June 14th, 1992 and have incorporated the events of those incidents into their experience and training.

We were concerned (as much for Inspector Massey as for those under his protection) that on June 14th, 1992, he had entered Giant Mine property without the back-up or support of another trained police officer. Had he been struck by a rock, been unable to communicate on his radio equipment or been overcome in any way, the situation which he handled so well might have had a different outcome. Again, we expect that this has already been incorporated into debriefing analyses. If not, it probably should have been.

We do have some general recommendations, most of which have to do with public education and information. Some of that education and information could, and should be provided by the RCMP as our national police force. In those provinces employing provincial and municipal police forces, perhaps the efforts of the RCMP could be coordinated with similar efforts by other law enforcement agencies.

1. The public needs to know in a clear way how the police are trained and required to act to protect themselves and others in danger of death or serious bodily harm.

2. The public needs to know that an armed person within 25 feet (8 metres) of a peace officer or person under his protection who poses a threat to the life or physical safety of that peace officer or person under his protection, is a sufficiently immediate threat that the

peace officer is trained, authorized, and may be justified in using deadly force to stop that person.

3. The public needs to know that warning shots are not recommended in training and are no longer considered part of the continuum of force by the RCMP.

4. The public needs to know that police officers are trained to shoot for "centre mass" where deadly force must be used. In other words, police where forced to shoot, are trained to shoot to kill.

5. Because it is sometimes important for police officers to make themselves known as peace officers and their presence felt "above the crowd" where RCMP officers have entered situations in camouflage or other issue uniforms from which their identity as peace officers may not be readily recongized, RCMP officers should always have as part of the clothing they wear or the equipment they carry, something which makes them easily and immediately recognizable as police officers. Reversible vests or jackets appear to be two such options. Tactical square members realized this before RCMP policy authorized and mandated that change in police uniform.

If the public were better informed of these realities and the training our national police force members receive, we would be less likely to place the police in situations which could lead to tragic consequences.

In the events of June 2nd and June 14th, 1992, the confrontations which took place between the police and members of the public involved normally law-abiding citizens. For the most part, they were hardworking miners. Some had families. Many had been in Yellowknife for many years. Their emotions were heightened

and their behaviour reflected the escalation of a bitter labour dispute in which their jobs were being done by replacement workers. How tragic it would have been if one of them or a member of the private security force or a member of the RCMP had been crippled or killed in the aggression or confusion of the June 2nd or June 14th incidents. On the dates in question, injury and death were real and immediate possibilities. In bringing these events about, as they did by their unlawful conduct on June 2nd and June 14th, 1992, the striking miners and their supporters gave the RCMP no option but to use force as they did, and to threaten to use deadly force.

Citizens, residents, and visitors to Canada, need to know and to be reminded that we may, by our actions directed towards the police or towards each other, risk precipitating police reactions similar to those of Inspector Massey, Constable Virk and Constable Joyes in such situations. Worse still, deadly force may justifiably be used against us. It could have been so used against Mr. Lisoway, Mr. Fournier and others.

Some members of the public may have hoped or even expected that this inquiry would enquire generally into the policing of the labour dispute between CASAW and Giant Yellowknife mine owner, Royal Oak. That was not our mandate. Nor is it in any way the subject of this report in which we have maintained our focus on

the conduct of the three named RCMP officers and on the public interest aspects of the two incidents which were the subject matter of the complaints of Mr. Seeton. All parties including Mr. Seeton's counsel, were careful to avoid any temptation to so broaden the evidence or the issues we were asked to deal with. We sensed that the bitter history of the strike has yet to be publicly enquired into. We did recognize that in this dispute, the RCMP were placed between striking union members and replacement workers. That obviously coloured the views of strikers and supporters towards the RCMP and the role the force played in policing the dispute. We saw that as an unfortunate consequence of this prolonged and bitter labour dispute. It would be improper for us to comment further on that general topic and we have made a conscious decision not to do so.

DATED this 31st day of October, 1995.

JOHN U. BAYLY, Q.C., Chairman

J.R. CUNNINGHAM, Q.C.

JOHN WRIGHT

APPENDIX "A"
PRELIMINARY MATTERS

MATTER 1:

COMMISSION COUNSEL SOUGHT A RULING AS TO THE ACCESS THE PRESS WOULD BE GRANTED TO THE HEARING ROOM DURING THE PROCEEDINGS BOTH IN THE PRE-HEARING AND HEARING PHASES OF THE COMMISSION HEARINGS.

RULING:

Then, on the basis of the agreement of counsel, this being a public hearing, certainly we are prepared to order that the representatives of the media may be present, that they may certainly take whatever notes they feel they wish to but that during the course of these hearings, while [we] are in session, photographs, films and tape recordings are not to be made either by members of the public or members of the Press.

MATTER 2:

COUNSEL FOR THE APPROPRIATE OFFICER RAISED FOUR GROUNDS FOR CONTESTING THE JURISDICTION OF THE PANEL SITTING AS THE COMMISSION TO PROCEED WITH THE HEARINGS. THE FIRST AND SECOND PRELIMINARY OBJECTIONS RELATED TO THE NOTICE OF DECISION TO HOLD A HEARING. THE THIRD AND FOURTH OBJECTIONS RELATED TO AND SOUGHT THE COMMISSION'S RECONSIDERATION OF THE CHAIRMAN'S DECISION TO HOLD A HEARING. IN THE FIRST OBJECTION, COUNSEL FOR THE APPROPRIATE OFFICER TOOK THE POSITION THAT THE NOTICE OF DECISION WAS INVALID BECAUSE THERE HAD BEEN PROCEDURAL UNFAIRNESS IN THE PROCESS LEADING TO THE DECISION TO HOLD A HEARING. HE ARGUED THAT THE PCC HAS THE DUTY TO HEAR SUBMISSIONS FROM THE APPROPRIATE OFFICER BEFORE THE CHAIRMAN EXERCISES HIS DISCRETION WHETHER OR NOT TO HOLD A HEARING. HE ARGUED FURTHER THAT THE CHAIRMAN HAD FAILED IN THAT DUTY AND THAT AS A RESULT HIS DECISION TO CALL FOR A HEARING TO BE HELD WAS INVALID.

RULING:

The Chairman of the RCMP Public Complaints Commission has the power under Section 45.43(1) to carry out in the public interest an investigation into a complaint or to institute a hearing to inquire into a complaint. He can and has done so in this instance.

We have, by his direction, been made the Commission for the sole purpose of holding that hearing and not for the purpose of examining or inquiring as to the basis upon which the Chairman chose to exercise his discretion under that section.

While we have the power under Rule 11 to deal with matters of jurisdiction, that power must be read in the context of Section 45.33 of the *Act* as this is the section under which these rules, and that one in particular have been made.

Nowhere does that section or any other section that we are aware of say that those rules are to be used with respect to our authority as a panel of the Commission to examine the decision of the Chairman made under Section 45.43.

If the Chairman's decision is to be challenged perhaps it should or should have been challenged elsewhere.

The application, therefore, to deny ourselves jurisdiction to hear these matters on the basis of an impugned decision or exercise of discretion by Chairman Beaulne is therefore denied.

MATTER 3:

IN HIS SECOND OBJECTION TO OUR JURISDICTION, COUNSEL FOR THE APPROPRIATE OFFICER CONTESTED THE NOTICE OF DECISION ON THE GROUNDS THAT IT WAS INADEQUATE.

RULING:

The Appropriate Officer in this case joined by counsel for the Named Members has objected to the June 6, 1994 Notice of Decision to institute a hearing as being inadequate.

Through his counsel, he has stated that there are insufficient particulars in the Notice and that he is not able to determine the case he has to meet.

He has referred us among other authorities to the ruling in the Leach and the RCMP found in the 1991 third volume of Federal Court reports at page -- and I am quoting -- at page 577. In that decision, the Federal Court stated:

> "If the Commission is to serve to maintain confidence of the public generally in the Force and its processes, the Commission through its Chairman must be free to determine when a hearing is warranted."

The trigger for a hearing may be a complaint and indeed it was in this case.

However, the *RCMP Act* provides at Section 45.37 that, where appropriate, the Chairman himself could instigate a complaint. That was not done here.

However, where a complaint is made, the Chairman is not confined to the complaint in his decision whether or not to order a hearing.

He describes in the Notice the subject of the hearing and he states implicitly because of the wording of the Statute that his decision is in the public interest.

The Commission Chairman orders a hearing where he deems it to be advisable in the public interest and that is what the provision of Section 45.43(1) tells us.

While the attention of the Commission Chairman may have been drawn initially to the matter by the complaint, the public interest may be independent of whether there be fault on the part of the Named Officers.

Sitting as the Commission, we are to look into the matters which are set out or described in the Notice in the context of a public inquiry and we are to report the facts that we find. We may, where appropriate, make recommendations.

So, therefore, the issue of fault does not necessarily arise in the context of the public inquiry. There are other public interests which may be served by a public inquiry in addition to that which occurs in some such inquiries with respect to the finding of fault.

It is appropriate, indeed we hold it to be required, that Commission Counsel lay out for the Named Officers, the Appropriate Officer and other parties the evidence which is to be called and the materials which he proposes to lay before us. Mr. Belzil has assured us that he has done so.

If he were to discover before the hearings were to commence or indeed during the course of the hearings that there were other relevant evidence or material, we take the position that it should be immediately disclosed and shared with all of the other parties with an interest.

To the extent that parties might be surprised by that or require time to prepare for that evidence to be led, we would of course consider an appropriate application.

Indeed, I should say here that if he were to discover material which he did not intend to put forward but which might be relevant that he should provide notice of that material to the other parties so that they could argue in the appropriate case that is should not be withheld from the public inquiry and so that it might be put forward.

The Notice which the Appropriate Officer says is required is higher or more detailed than that which was provided by Chairman Beaulne on the 6th day of June, 1994.

In so arguing, he has relied on certain decisions. He has referred us to the cases of *Rodney*, of *Davis*, of ex parte *Morissey* and *Daigle*.

Those are cases where clearly the objective was to find fault and to impose sanctions criminal or otherwise.

In such cases, the responsibility to give particulars in the Notice is obviously higher than it is in a case where we are to inquire in the public interest and to find facts.

We are satisfied on the basis for which the purpose -- let me start that sentence again. We are satisfied on the basis of the purpose for which the notice is given under Section 45.43 and, following that, 45.44 that the particulars set out in the Notice are adequate and that full disclosure of the relevant evidence has already been provided.

In addition, in this case, the RCMP through the Appropriate Officer are in a position to and have conducted their own independent investigations. We are advised by Mr. Scott that, in fact, criminal investigations were conducted and the conduct of the Named Officers where relevant to those cases has already been laid out in the courts.

We understand that they have also looked into the conduct of their members themselves in that context.

This makes the case distinguishable from those cited by Mr. Scott in this other way.

We therefore find the notice is adequate and we are prepared to proceed on its basis.

MATTER 4:

IN HIS THIRD OBJECTION TO OUR JURISDICTION, COUNSEL FOR THE APPROPRIATE OFFICER CHALLENGED THE PANEL'S JURISDICTION TO HOLD A HEARING BECAUSE THE TWO APPLICATIONS WHICH THE APPROPRIATE OFFICER HAD SUBMITTED TO THE PCC ON SEPTEMBER 5 AND NOVEMBER 10, 1994 RESPECTIVELY SEEKING RECONSIDERATION OF THE CHAIRMAN'S DECISION TO HOLD A PUBLIC HEARING WERE NEVER DEALT WITH BY THE CHAIRMAN, WHOM IT WAS ARGUED WAS THE PERSON HAVING AUTHORITY TO DO SO.

MATTER 5:

IN THE ALTERNATIVE ARGUMENT TO THAT WHICH HE PRESENTED IN HIS THIRD OBJECTION, COUNSEL FOR THE

APPROPRIATE OFFICER ARGUED THAT IF PCC CHAIRMAN BEAULNE HAD IN FACT RECONSIDERED HIS DECISION AND IN THE PERSON OF MAITRE PIERRE-Y DELAGE HIS GENERAL COUNSEL HAD CONVEYED THAT DECISION, NAMELY THAT HAVING CALLED FOR A HEARING HE, THE CHAIRMAN, WAS *FUNCTUS OFFICIO*, HE WAS MISTAKEN IN THAT DECISION AND THAT IN FACT AFTER HAVING CONSIDERED HIMSELF *FUNCTUS* THE CHAIRMAN HAD FAILED TO EXERCISE HIS LEGITIMATE JURISDICTION, NAMELY TO RECONSIDER HIS DECISION TO INSTITUTE A HEARING. THE QUESTION AS RESTATED BY MR. SCOTT FOR THE APPROPRIATE OFFICER WAS WHETHER THE DECISION OF THE PCC CHAIRMAN TO HOLD A HEARING WAS A FINAL DECISION WITH RESPECT TO THE COMPLAINT WHICH HE HAD REFERRED TO THE PANEL.

RULING:

We have been asked for rulings with respect to the third and fourth jurisdictional matters raised by Mr. Scott on behalf of the Appropriate Officer and we have our ruling which we have combined with respect to the two matters.

The ruling is as follows: Having decided that our authority to rule with respect to jurisdiction under Rule 11 of our Rules of Practice is limited and does not include the authority to make jurisdictional rulings with respect to the acts or omissions of the Chairman of the PCC, we do not consider it premature for us to proceed on the basis of the June 6, 1994 Notice nor do we consider it our function under those rules to determine whether by issuing the June 6, 1994 Notice the Chairman of the Commission is *functus*.

As far as we are concerned, the Notice to us is directive. It gives us our jurisdiction. In the absence of notice to the contrary, we must assume it is final.

Mr. Scott, for the Appropriate Officer, may have other remedies. He may feel freer to pursue those remedies with our ruling in hand. So be it.

Unless and until we are directed otherwise, we will proceed on the basis of the June 6, 1994 Notice. The applications are, therefore, both denied.

MATTER 6:

COMMISSION COUNSEL SOUGHT AN AMENDMENT TO THE NOTICE OF HEARING WITH RESPECT TO THE INCIDENT OF JUNE 2, 1992 DELETING THE WORDS "A FIREARM" AND REPLACING IT WITH THE WORDS "AND DISCHARGED FIREARMS" IN THE NOTICE WHICH READS IN PERTINENT PART:

"...that Inspector Dennis Massey, Constable D.N. Joyes and Constable Amrik Sigh Virk relating to the demonstration of excessive force when they pointed a firearm at picketing strikers on Giant Mine property at or about midnight, June 2, 1992..."

COMMISSION COUNSEL PROPOSED THAT THE REST OF THE NOTICE WOULD REMAIN INTACT.

In light of our rulings, particularly the last one and the first one with respect to the authority we do have with respect to the Commission Chairman, how is it we could amend the Notice under which we have been asked to make these inquiries or to hold this public hearing[.]

You are not saying, though, that by chairing this hearing of the Commission into this complaint, I have become the Chairman[.]

Is it your view, before we go on, that assuming that we find we do not have any jurisdiction to change the Notice that we can nonetheless inquire into and, if appropriate, find facts with respect to surrounding circumstances and so report

RULING:

Mr. Belzil, I think we can deliver our decision on Agenda Item #11 without the necessity of retiring and we will be dismissing the Application to amend the Notice of Hearing.

We agreed with Counsel for the Appropriate Officer and Counsel for the Named Officers that the power to institute a hearing is within the exclusive domain of the Chairman pursuant to Section 45.43(1) and Section 45.44 of the *RCMP Act*.

We accept our powers are otherwise limited. Whether they are limited as Mr. Scott has invited us to consider in his parallel comments with respect to Section 45.45(1) and Section 24.1(3) (a), (b), and (c), it is not necessary for us to decide at this point nor is it necessary for us to decide in the advance of applications for or objections to the leading of evidence what may be relevant to those things which are to be inquired into and we will wait until the appropriate time to deal with such matters.

Although we accept that there may be some dispute as to whether some evidence of surrounding events is relevant either to be heard or, although it may be relevant to be heard, to be reported on.

MATTER 7:

COMMISSION COUNSEL SOUGHT A RULING WHETHER A CERTAIN LETTER INCLUDED IN THIS EXHIBIT BOOK WHICH HAD BEEN PREPARED AND CIRCULATED SHOULD OR SHOULD NOT BE INCLUDED. THE LETTER WAS WRITTEN BY THE COMPLAINANT MR. SEETON TO THE COMMISSION NOVEMBER 9, 1992. PORTIONS OF THE LETTER HAD BEEN OBJECTED TO BY COUNSEL FOR THE APPROPRIATE OFFICER BECAUSE IT RAISED ISSUES WHICH WERE NOT BEFORE US.

RULING:

With respect to Agenda Item #3, we are of the view that because the Exhibit Book is to contain what is relevant evidence that those portions of the complaint which are relevant to the matters set out in the Notice of Hearing should form part of the Exhibit Book.

To the extent that a goodly portion of what appears at Tab #1, a complaint, deals with matters which are alleged to have happened subsequent to the matters which we are to inquire into, it is neither necessary nor relevant for those to be included in the Exhibit Book and we do not see it as a difficult task to placé in the Exhibit Book those portions of the letter which are relevant.

And, to make that task easier, we are prepared to rule what those are.

They begin on page 1 of the letter and they include "To whom it may concern" and the reference line, the first two lines only. So it reads:

> "Re: Complaint by the Canadian Association of Smelter and Allied Workers, Local 4".
>
> "We are making the following formal complaint against the RCMP on behalf of the striking members of CASAW Local 4."

And then from page 7, under numbered item 4, "Miscellaneous" -- but the numbered item and "Miscellaneous" are not necessary in light of our editing -- that second paragraph only which begins:

> "In addition, we refer..."

and ends:

> "...several eyewitnesses."

Then, under "Concluding Remarks" -- it may or may not be a preference to keep the terms "Concluding Remarks". I suspect it is not -- the last sentence only:

> "We look forward to hearing from you as soon as possible."

[In addition] the signature block and the items which deal with to whom the letter was copied [shall be part of the exhibit]. That is our ruling.

MATTER 8:

COMMISSION COUNSEL SOUGHT A RULING WITH RESPECT TO THE RELEVANCE AND THE ADMISSIBILITY OF THE EVIDENCE OF STAFF SGT. HUGH STEWART WHOM IT WAS ANTICIPATED WOULD BE ABLE TO GIVE EVIDENCE ON THE SUBJECT OF FIREARMS TRAINING FOR RCMP MEMBERS. COLLATERAL TO THIS APPLICATION WAS MR. BELZIL'S APPLICATION HEARD AT THE SAME TIME FOR AN ORDER DIRECTING THAT STAFF SGT. STEWART BE MADE AVAILABLE TO BE INTERVIEWED BY A PUBLIC COMPLAINTS COMMISSION INVESTIGATOR.

RULING:

Mr. Belzil, you have asked for a ruling with respect to the issue of a subpoena for a witness S/Sgt. Stewart, I believe, and we have that ruling.

We have combined our ruling on the two Agenda Items which deals with his evidence.

We are of the view that Firearms Training Officer S.Sgt. Stewart may be called and a subpoena will be issued for his attendance at the hearings.

In order that he be properly prepared, we direct that he be made available to be interviewed by the appropriate personnel of the Complaints Commission or Mr. Belzil himself and that a summary of his expected evidence be provided to all parties prior to the commencement of the hearing of evidence, that is, before the 13th of February unless otherwise ordered.

We see no reason why he should be an exception to the exclusion order which is being sought by all parties.

To the extent that his expert opinion may be sought, we will make no specific ruling except to say that we will not allow him to be asked to comment in any way on the evidence of any witnesses with respect to the events of June 2nd and June 14th, 1992 with the Giant Yellowknife Mine or with respect to the appropriateness of the conduct of any of the Named Officers caught up in those events.

Should it be desirable to have him give evidence as to the training given to the witnesses Massey, Joyes, and Virk, we will entertain an application at the appropriate time to have him review a summary of or

transcript references taken from their evidence but we will hear all counsel on any such application.

We have considered the uses of the training evidence given in previous RCMP Public Complaints Commission hearings, particularly the uses for which that evidence is called and the uses to which it was put in the *Halliday* decision. These are summed up well and clearly by Member Lymon Robinson, QC on page 10 of that decision and I quote:

> "The purposes of the Commission in undertaking a review of the policies, procedures and training programs of the RCMP which relate to the conduct of the RCMP member that is the subject of a complaint is not to make policy with the RCMP but rather to determine whether a review of existing policies, procedures and training programs is desired and, if it is, to make recommendations with respect to matters that should be considered during such a review."

Whether we will be able to make similar use of the Stewart evidence, of course, remains to be seen.

We distinguish this case from that of *Rankin* where the evidence, in that case Intelligence Reports, sought were of little or no relevance to the issues before the Tribunal. Here, firearms training may well be relevant to the issues we must deal with arising out of the facts alleged in the Notice to institute a hearing.

Furthermore, we are influenced by the support of the application which comes from the Named Officers whose conduct is the very core of this hearing. The fact that they wish the evidence of Officer Stewart to be placed before us is important. It may give them the opportunity to place in evidence before us things which are important to their respective or their collective positions.

MATTER 9: **COMMISSION COUNSEL SOUGHT A RULING AS TO THE APPROPRIATE ORDER OF EXAMINATION IN CHIEF AND THE CROSS EXAMINATION OF WITNESSES.**

RULING: With respect to those witnesses who were identified to us as Union members or Union witnesses, the order will be: Examination-in-chief by Commission Counsel followed by cross examination by Messrs. Scott, Goddard and Marshall.

With respect to the witnesses identified as Pinkerton's witnesses after examination-in-chief by Commission Counsel, the order of cross examination will be Messrs. Marshall, Scott and Goddard.

With respect to witnesses Massey, Virk and Joyes after examination-in-chief by Commission Counsel, the order of cross examination will be as follows: Messrs. Marshall, Scott, and Goddard.

And finally, with respect to other RCMP witnesses including Officer Stewart, after examination-in-chief by Commission Counsel, the order of cross examination will be as follows: Messrs. Marshall, Scott and Goddard.

MATTER 10:

COMMISSION COUNSEL SOUGHT A RULING WITH RESPECT TO THE SUBJECT OF EXPENSES. COUNSEL REPRESENTING THE NAMED OFFICERS, THE APPROPRIATE OFFICER AND THE COMPLAINANT RAISED RELATED QUESTIONS UNDER SECTION 45.45(13) OF THE *RCMP ACT*. SECTION 45.45(13) READS:

> **"(13) WHERE THE COMMISSION SITS AT A PLACE IN CANADA THAT IS NOT THE ORDINARY PLACE OF RESIDENCE OF THE MEMBER OR OTHER PERSON WHOSE CONDUCT IS THE SUBJECT-MATTER OF THE COMPLAINT, OF THE COMPLAINANT OR OF THE COUNSEL OF THAT MEMBER OR OTHER PERSON OR THAT COMPLAINANT, THAT MEMBER OR OTHER PERSON, COMPLAINANT OR COUNSEL IS ENTITLED, IN THE DISCRETION OF THE COMMISSION, TO RECEIVE SUCH TRAVEL AND LIVING EXPENSES INCURRED BY THE MEMBER OR OTHER PERSON, COMPLAINANT OR COUNSEL IN APPEARING BEFORE THE COMMISSION AS MAY BE FIXED BY THE TREASURY BOARD.**

RULING:

With respect then to the application for the reimbursement of travel and living expenses incurred by Mr. Goddard as Counsel for the Named Members and the Named Members in these two complaints, it is our ruling that, pursuant to the provisions of Section 45.45 (13) of the *RCMP Act*, that we order that the travel and living expenses incurred by the three Named Members and their Counsel be paid at the usual rates applicable to Government employees on duty travel and we do not propose to try and guess or quote what those are but that those can be worked out and that those be subject to review by the Public Complaints Commission in the usual way to ensure that the expenses claimed are properly allowable in those categories.

And that, for the entire hearing and with respect to those Named Members to ensure that they are available to instruct Counsel who must be present throughout.

MATTER 11:

COMMISSION COUNSEL SOUGHT A RULING WHETHER SUBPOENAS SHOULD BE ISSUED TO COMPEL THE ATTENDANCE OF DEREK WISEMAN AND EDWARD SAVAGE, CASAW MEMBERS WHOM MR. SEETON'S COUNSEL ASKED TO BE PRODUCED BEFORE US. COMMISSION COUNSEL TOOK THE POSITION THAT WHILE THEY MIGHT HAVE RELEVANT EVIDENCE THEIR TESTIMONY WAS NOT NECESSARY BECAUSE IT ADDED NOTHING TO THAT WHICH HE WOULD IN ANY EVENT BE PLACING BEFORE US.

RULING:

There are two questions here as I understand it: one is, Mr. Marshall may well be applying to have them subpoenaed. And, the second question is: Do they have relevant evidence? And, the parties may take position as to whether we should even issue a subpoena although I suspect that is in our discretion and we may not necessarily need counsel's guidance or otherwise.

But as to whether the witnesses can be called and, if called, what it is we will permit them to say, that is another matter.

The question that arises is this: we do not know very much about this case and with good reason. We have spent the last many months since being appointed doing our best not to find out about it.

So the context within which the evidence that Mr. Marshall would like us to hear is something we know very little about. So we would either need to know something about that in determining whether their evidence is relevant or we would need to wait to some appropriate time where we have other evidence already before us for the application to be made in substance. The determination of whether these witnesses should be allowed to give whatever evidence they are being summoned to give because it fits in or does not fit in with the matters we are dealing with and is relevant or not to them, [can be determined better at that time.]

If I am making myself clear at this late hour, that is the problem I see if Mr. Marshall says "I want them called. Their evidence is this." I am inclined to wonder if we can say anything more than: shouldn't we wait and see?

How can we decide whether they are necessary as well as relevant until we have heard these other witnesses and my reaction to what I am hearing, subject to anything someone might say to persuade me otherwise, is that we should issue the [requested] subpoenas and deal with whether their evidence need be heard and perhaps the relevance, if

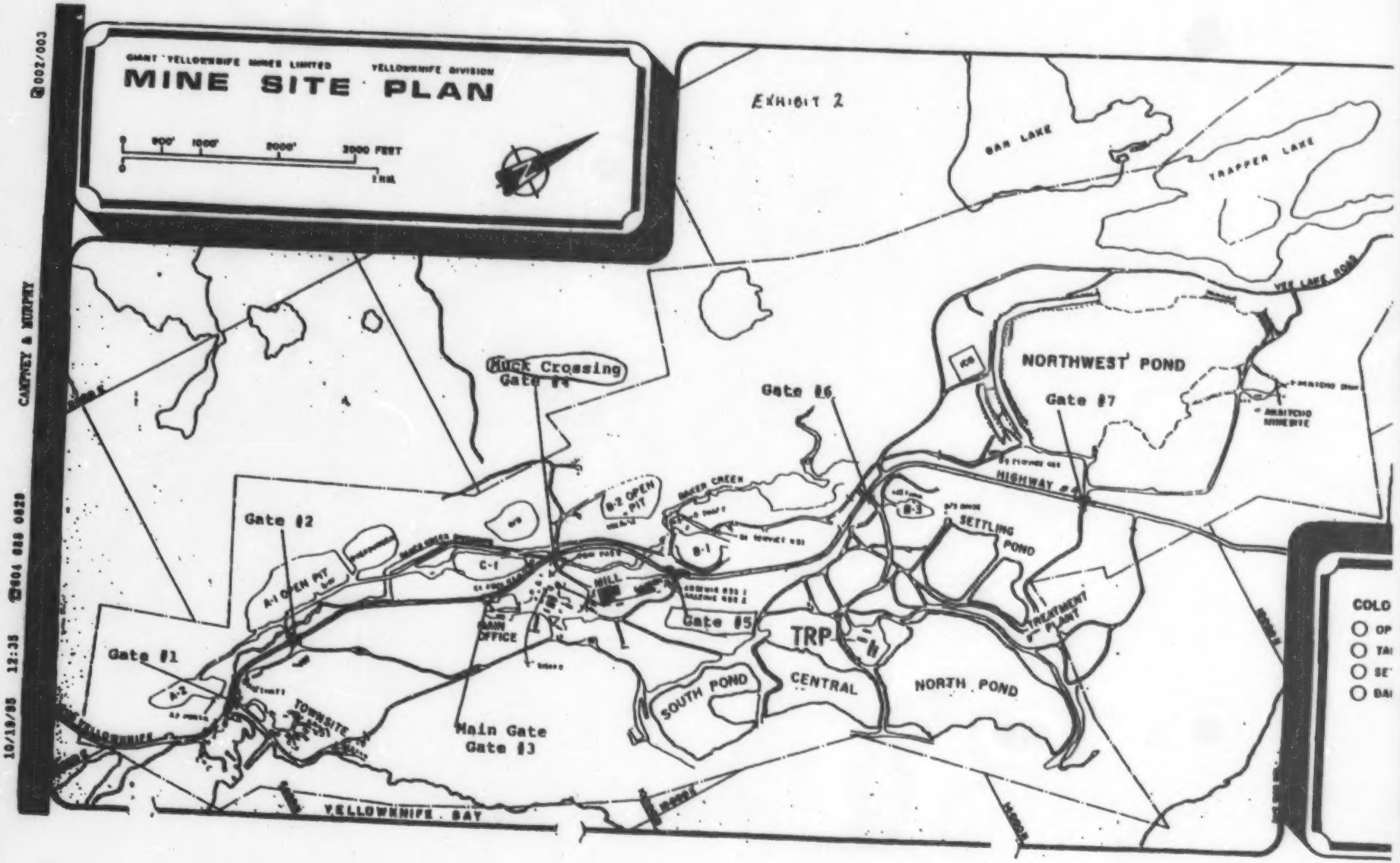
any of [the] evidence [with respect to] any day other than the 14th of June. [Then we can entertain when] an application [with respect to the relevance of any evidence they may be asked to give] or if an application is made first to call them and secondly to hear evidence of anything but that day.

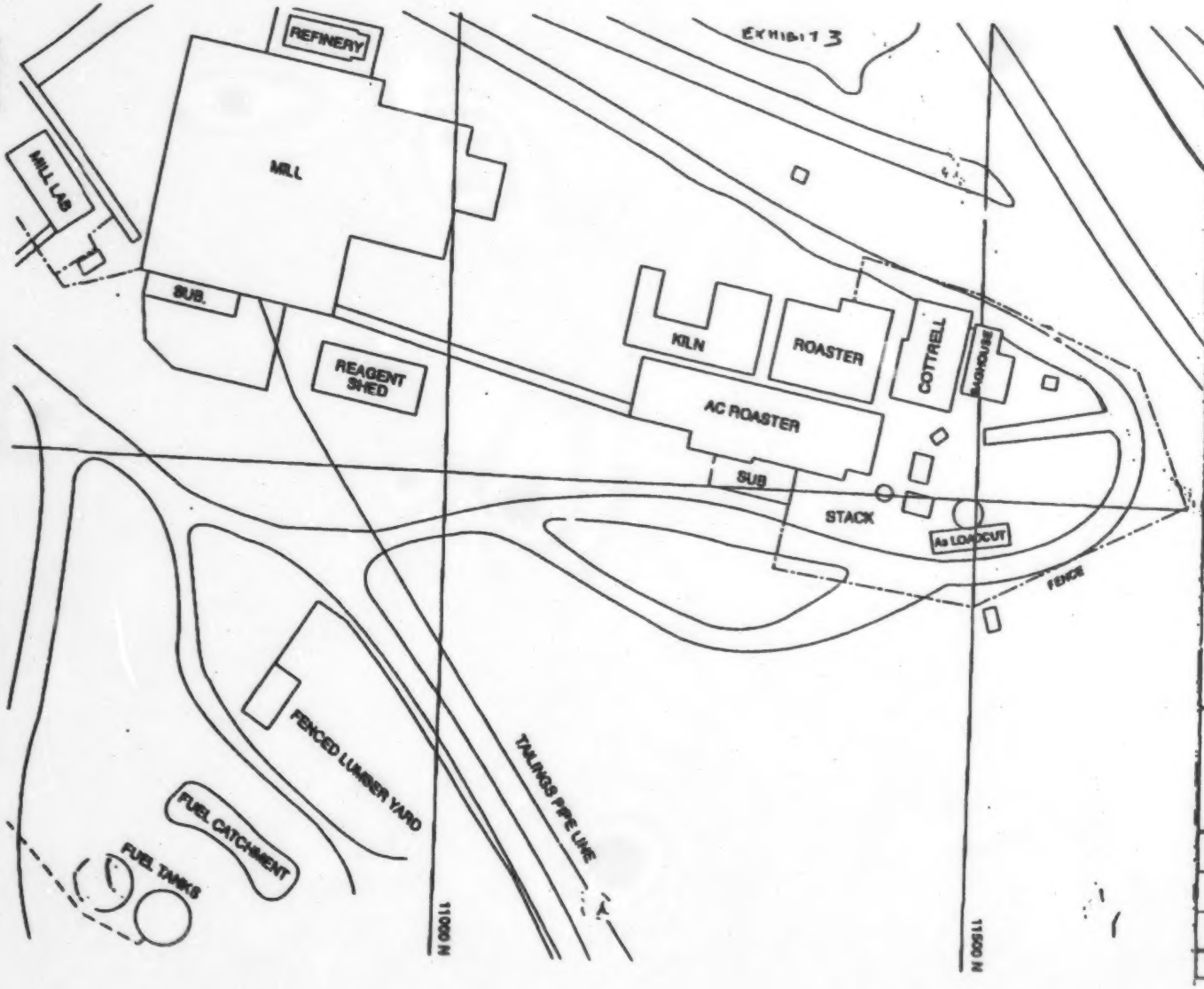
**NOTE: Because the transcript is confusing and the rulings were delivered in the hearing room, we have supplied words or deleted portions not strictly part of the rulings.

APPENDIX "B"

MINE SITE PLANS

EXHIBIT 2


GIANT YELLOWKNIFE MINES LIMITED
YELLOWKNIFE DIVISION
MINE SITE PLAN
500' 1000' 2000' 3000 FEET
1 MILE
BAR LAKE
TRAPPER LAKE
Muck Crossing
Gate #4
Gate #6
NORTHWEST POND
Gate #7
HIGHWAY #4
Gate #2
A-1 OPEN PIT
B-2 OPEN PIT
B-1
B-3
SETTLING POND
C-1
MILL
MAIN OFFICE
Gate #5
TRP
TREATMENT PLANT
Gate #1
A-2
TOWNSITE
SOUTH POND
CENTRAL
NORTH POND
Main Gate
Gate #3
YELLOWKNIFE BAY
COLO
OP
TA
SE
BA



NOTES:
BASE MAP: 1987 AERIAL

	REVISION	DATE	BY

Royal Oak Mines Inc.

GIANT MINE
SURFACE PLAN

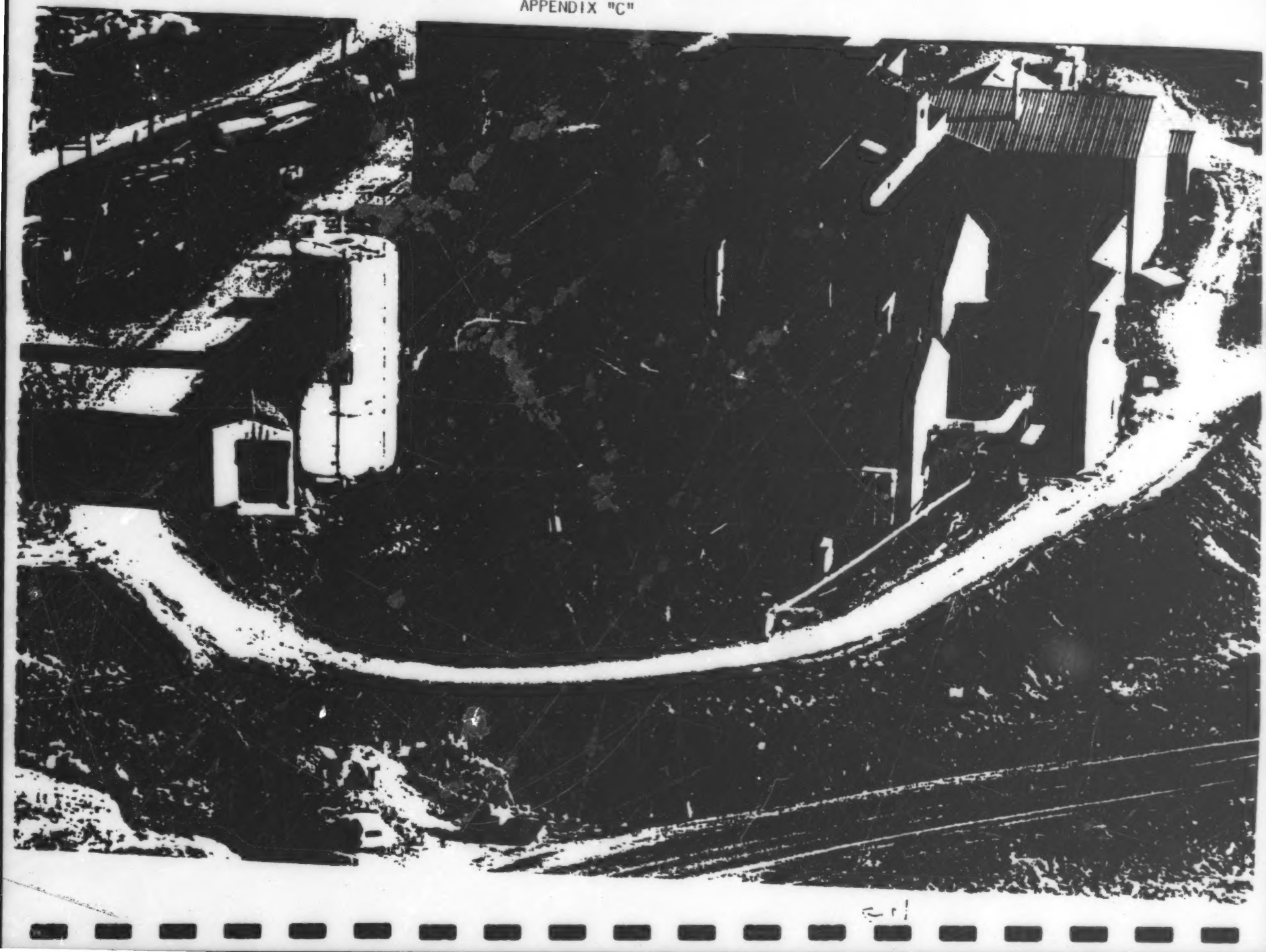
DRAWING TITLE

DETAILED MINESITE LAYOUT

DRAWN BY	SCALE 1"=100'
CHECKED BY	DATE NOV. 1992
ACAD REFERENCE	C:\DCA\SURF\MINSITE
DRAWING NO.	S—92—10

003/003 CAMPNEY & KURPIT 10/19/92 12:35 604 688 0828

APPENDIX "C"



APPENDIX "D"

BULLETIN

	OM	OM-352
MANUAL MANUEL OPERATIONAL DES OPÉRATIONS	ISSUED PUBLIÉ LE 92-01-27	LAST NO. DERNIER Nº OM-351

SUBJECT: DISCHARGE OF FIREARMS

OBJET: USAGE D'ARMES À FEU

This bulletin cancels III.2.C. and J., Admin. Manual I.3.E.9. and consolidates directives on the discharge of firearms.

1. General.

a. A member may use RCMP-approved firearms and ammunition only after successfully completing a firearms training course.

1. A member must annually requalify for firearms use.

b. A member outlined in 1.a. may use RCMP-approved firearms if:

1. an activity is duty-related, or

2. the activity is sanctioned by the employer.

c. For the purposes of this bulletin, duty-related or employer-sanctioned use is:

1. an organized target practice coordinated through the div. training NCO or approved by the commander;

2. an organized shooting competition sanctioned and held at a recognized shooting range;

3. authorized annual requalification;

4. training requirements; or

5. outlined in 2.

Le présent bulletin annule les art. III.2.C. et J., et le par. I.3.E.9. du Manuel d'adm. et réunit les directives sur l'usage des armes à feu.

1. Généralités

a. Le membre ne peut utiliser d armes à feu et des munitions a prouvées par la G.R.C. qu'apr avoir réussi un cours de forma tion au tir.

1. Le membre doit subir chaqu année les épreuves de quali fication pertinentes.

b. Le membre mentionné à l'al. 1.a peut utiliser des armes à feu ap prouvées par la G.R.C. lorsqu l'activité:

1. est reliée au travail, ou

2. est approuvée par l'employeur.

c. Aux fins du présent bulletin, on entend par "usage relié au travail ou approuvé par l'employeur":

1. un exercice de tir organisé, coordonné par l'intermédiaire du s.-off. div. de la formation ou approuvé par le chef;

2. une épreuve de tir organisée dûment approuvée et ayant lieu à un champ de tir reconnu;

3. une épreuve annuelle de qualification autorisée;

4. la formation au tir; ou

5. toute activité indiquée au par. 2.

.../2

2. Member

a. Do not discharge a firearm at a person except to protect life or prevent grievous bodily harm.

b. Do not discharge a firearm at any part of an aircraft, vessel or moving motor vehicle in an attempt to disable the aircraft, vessel or vehicle.

c. You may shoot out the tires of a stationary motor vehicle if there are reasonable and probable grounds to believe that a serious criminal offence has been committed or is about to be committed and the escape of the suspect/accused would, in all likelihood, cause death or grievous bodily harm to a person.

NOTE: For the purposes of this bulletin, a serious criminal offence is an offence that by its nature, indicates dangerousness on the part of the offender, and involves circumstances which lead to reasonable and probable grounds that death or grievious bodily harm has/is likely to occur.

d. If it is necessary to discharge a firearm as outlined at 2.a. and b., report the circumstances through channels to the A&PO.

e. You may also discharge your firearm to:

1. summon assistance;

2. dispose of domestic or wild animals during the course of duty;

3. gain control of a situation you reasonably believe, if allowed to continue, could result in injury or death to a person; or

4. prevent the escape of a person you are arresting/ have arrested for a serious criminal offence.

2. Membre

a. Ne pas faire feu sur une personne, sauf pour protéger une vie ou empêcher des blessures graves.

b. Ne faire feu sur aucune partie d'un aéronef, d'un navire, ou d'un véhicule automobile en marche, afin de mettre le moyen de transport hors d'état de fonctionner.

c. On peut tirer sur les pneus d'un véhicule automobile immobile s'il y a des motifs raisonnables et probables de croire qu'une infraction criminelle grave a été commise ou est sur le point de l'être et que la fuite du suspect ou de l'accusé causerait vraisemblablement la mort ou des blessures graves en ce qui concerne une autre personne.

NOTA: aux fins du présent bulletin, on entend par infraction criminelle grave une infraction qui de par sa nature indique la dangerosité du contrevenant et qui comporte des circonstances nous portant à croire qu'il pourrait y avoir risque de mort ou de blessures graves.

d. Si l'on doit utiliser une arme à feu dans les circonstances énoncées aux al. 2.a. et b., faire un rapport, par la filière habituelle, à l'agent A.P.

e. On peut également utiliser son arme à feu afin:

1. de demander de l'aide;

2. d'achever un animal domestique ou sauvage dans l'exercice de ses fonctions;

3. de maîtriser une situation qui pourrait causer la mort ou des blessures si l'on n'intervient pas, ou

4. d'empêcher la fuite d'une personne qu'on arrête ou qu'on a arrêtée à cause de la perpétration d'une infraction criminelle grave.

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